

REMARKS

Applicant has carefully reviewed and considered the Examiner's Office Action dated August 9, 2005. Reconsideration is respectfully requested in view of the foregoing amendments and the following comments.

Applicant thanks Examiner Weaver for the courtesies extended to his representative during the telephonic interview held on November 2, 2005. During that interview, proposed specification and drawings changes and proposed claimed changes were discussed. In particular, the Examiner indicated that the specification and drawing changes overcame the drawing objection and the 35 U.S.C. § 112, first paragraph rejection. With respect to the proposed claims, the Examiner indicated that the amendments to claims 1 and 11 would overcome the applied prior art rejection because Leigner does not disclose opposing panels with two different radii of curvature as one set of opposing panels is flat and does not have a radius of curvature.

By this Amendment, the specification is amended, as proposed in the telephonic interview to provide a brief description of new Figure 6 showing a cross-section of body section **8** and to revise paragraphs [00021] and [00022] to refer to midpoint **8m** and the vertical side panel **8b**; claims 1, 3, 9-11, 13-15 and 17 are amended as discussed in the November 2, 2005 telephonic interview; claim 2 is canceled; new claims 19-20 are added; Figures 1 and 3 are amended and new Figure 6 is presented as proposed and discussed during the telephonic interview. Accordingly, claims 1 and 3-20 are pending in the present application.

The drawings were objected to because the R1 and R2 were not identified in the drawings, and the recessed vertical posts, the two opposing relatively smooth vertical

sides, and the ribbed bridge **20** are not illustrated. While Figures 1-3 of the drawings show the recessed vertical posts **12** (as noted by the inward curve at the top of the posts), a portion of each of the opposing relatively smooth vertical sides **8b** and a ribbed bridge **20** (Figure 3 clearly shows the ribbed bridge), Applicant presents a new Figure 6, which is a cross-section of container body **8** and clearly shows the two opposing relatively smooth vertical sides **8b** and the recessed vertical posts **12**. This new figure is based on Figures 2 and 3 that show the curvature of the relatively smooth side **8b** being greater (more pronounced) than the curvature of the remaining opposing sides **8a**. In addition, the radius of curvature of the relatively smooth side **8b** is identified as R_1 , which is smaller than the radius of curvature (R_2) of the remaining opposite sides **8a**.

Figure 6 illustrates the two different radius of curvature by showing circles that include the radius of curvature for side panel **8a** (R_2) and the radius of curvature for side panel **8b** (R_1), respectively. Thus, two different circles form these radius of curvature of these vertical sides. As described on page 6, paragraph [00021], lines 7-10, while the curvature of opposing panels **8b** would be greater (more pronounced) than the curvature of the remaining, opposing panels **8a**, the radius of the cross-sectional curve through side panels **8b** (i.e., the circle formed to include the cross-sectional curvature of one side panel **8b**) should be smaller than the underlying geometry (i.e., circle including the cross-sectional curvature) of each side panel **8a**. R_1 and R_2 , were used, not as reference characters, but for variables in the equation in the last two lines of paragraph [00021]. Since the radius equation is not claimed, it is respectfully submitted that it is not necessary to illustrate these radii. However, in view of the Examiner's comments, Figure 6 is presented to clarify the two differing radius of curvatures. Accordingly, it is

submitted that all of the claimed features are shown by the drawings. Withdrawal of the drawing objection is respectfully requested.

Claims 9, 10 and 16 were rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement. Paragraph [00021] of the originally-filed specification describes a four-sided body section **8**. There are two opposing side panels **8a** that have a different cross-sectional curvature than the two opposing side panels **8b**. Claims 9, 10 and 16 recite the curvature of the each opposing side panel (**8a**, **8b**). In particular, the curvature of the relatively smooth sides (**8b**) are curved outwards from one vertical post (**12**) to a mid-section (**8m**) of the respective relatively smooth, substantially vertical side adjacent the one vertical post where the mid-section is parallel to the longitudinal axis (**A**). As noted in the Office Action, the mid-section is defined as a line parallel to the longitudinal axis of the container body section. It is respectfully submitted that one of ordinary skill in the art reading the originally-filed application would have understood how to make and/or use the invention based on Applicant's description.

For the convenience of the Examiner, the drawings now identify a mid-section **8m** of the relatively smooth vertical side **8b** and Figure 6 clearly show the curvature of the container body section **8**. In response to the Examiner's query concerning how can the opposing sides be adjacent, the claims are amended to recite that "each of the two opposing, relatively smooth, substantially vertical sides are curved outwards from one vertical post to a mid-section of the respective relatively smooth, substantially vertical side adjacent the one vertical post". Thus, the claims, as originally presented, referred to a side **adjacent the vertical post**. It is believed that the foregoing amendments to the

claims clarify this matter. Accordingly, it is believed that one of ordinary skill in the art would have understood that Applicant possessed the claimed invention at the time of filing based on reading the originally-filed application. Withdrawal of this rejection under 35 U.S.C. §112, first paragraph is respectfully requested.

Claims 4 and 5 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite for the reasons set forth in paragraph 3 of the Action. The foregoing amendments to claim 1 recites that each of the four substantially vertical sides are separated by a vertical post. Accordingly, there is sufficient antecedent basis for the recitation of “the vertical post” in claims 4 and 5 and withdrawal of this rejection is respectfully requested.

Claims 1, 2 and 8-10 were rejected under 35 U.S.C. §103(a) as being unpatentable over EP Published Patent Application No. 0 469 777 to Leigner in view of either Japanese Publication No. 11348954 to Wada or U.S. Patent No. 5,279,433 to Krishnakumar et al. (hereinafter referred to as “Krishnakumar”) as explained in paragraph 4 of the Action. This rejection is respectfully traversed.

Leigner is directed to a lightweight plastic jar having outwardly convex front and back walls, each having a relatively large radius of curvature and a pair of side walls having relatively large, planar portions. That is, Leigner teaches a jar with front and back panels having a relatively large radius of curvature and substantially flat side panels (with no radius of curvature) that are capable of controlled inward deflection. Claim 1 has been amended to recite that a radius of a cross-sectional curve through the relatively smooth vertical sides is smaller than the radius of a cross-sectional curve through an opposing side with a vacuum panel. Since Leigner teaches a relatively flat side wall (16), there is

only a single radius of curvature in the jar taught by Leigner. Accordingly, Leigner fails to disclose, teach or suggest a jar having four substantially vertical sides with each set of opposing sides has a different cross-sectional **curvature**. Consequently, Leigner cannot teach or suggest a set of opposing relatively, smooth panels with a **smaller radius of curvature** and a set of opposing vertical side panels with a vacuum panel having a larger radius of curvature as Leigner teaches opposing sets of sides with a relatively large radius of curvature and a planar side wall with a vacuum panel (i.e., no radius of curvature).

The secondary reference to Wada shows a bottle with four planar sides separated by curved corners. Thus, Wada does not provide a suggestion to one of ordinary skill in the art to modify Leigner to have side walls with a vacuum panel having a greater radius of curvature than the large radius of curvature of the front and back walls. The combination of the small radius of curvature of the relatively smooth panels and the much larger radius of curvature for the vacuum panel sides of a four-sided container of the present invention enables the smooth panels to be rigid under vacuum conditions while the much larger radius of curvature allows the vacuum panel sides to react and flex under vacuum conditions. Nowhere does Wada disclose or suggest a four-sided container with two different radii of curvature for the two sets of opposing vertical sides. Accordingly, Wada cannot cure the defects of Leigner, and no combination of Leigner in view of Wada would result in the claimed invention.

The alternative secondary reference to Krishnakumar discloses a hot-fillable container with six vacuum panels symmetrically disposed about the side wall of the container. Thus, Krishnakumar teaches all of the side panels having vacuum panels and

all having the same radius of curvature. Consequently, there is no motivation to modify Leigner to have two different radii of curvature found in either Wada or Krishnakumar. Withdrawal of the rejection under 35 U.S.C. §103 (a) of claims 1-2 and 8-10 is respectfully requested.

Claims 11, 13 and 18 were rejected under 35 U.S.C. §103(a) as being unpatentable over the references discussed above and further in view of U.S. Patent No. 5,341,946 to Valliencourt et al. (hereinafter referred to as “Valliencourt”) for the reason stated in paragraph 5 of the Action. This rejection is respectfully traversed.

Valliencourt discloses a hot-filled plastic container having reinforced pressure absorption panels. All of the side panels of Valliencourt have vacuum panels. Nowhere does Valliencourt disclose two opposing relatively smooth vertical sides. Consequently, Valliencourt cannot teach or suggest to one of ordinary skill in the art modifying the container of Leigner with two opposing side walls having different radius of curvature. In particular, Valliencourt does not teach a relatively smooth vertical side having a smaller radius of curvature (and thus, a more pronounced curve) than the radius of curvature for the side having a vacuum panel, as recited in Applicant’s claim 1. Accordingly, Valliencourt cannot cure the defects of any combination of Leigner, Wada, and Krishakumar. Withdrawal of the rejection of claims 11, 13 and 18 is respectfully requested.

Claim 3, 14, 16 and 17 were rejected as being unpatentable under 35 U.S.C. §103(a) as being unpatentable over the references applied to claims 2 and 11 and further in view of U.S. Publication No. 2002/0096486 to Bourque et al. (hereinafter referred to as “Bourque”) for the reason set forth in paragraph 6 of the Action. This rejection is

respectfully traversed.

Claim 3 is dependent upon claim 1 and adds the feature of etching on the vacuum panels. Claims 14, 16 and 17 are dependent upon claim 11 and add the features of surface etching on the vacuum panels, each of the two opposing, relatively smooth, substantially vertical side panels are curved outwards from one vertical post to a midsection of the respective vertical side panel adjacent the one post, and the two opposing vertical sides with a vacuum panel are curved outwardly slightly compared to the curve of the two opposing, relatively smooth vertical sides, respectively. Claims 3, 14 and 16-17 are patentable at least for the reasons for claims 1 and 11, as argue above. In addition, Bourque fails to disclose, teach or suggest a four side container where opposing sides have two different radius of curvature, as recited in claim 14 and further defined in claims 14 and 16-17. On the contrary, Bourque discloses a four sided container where the four side panels are planar. Consequently, Bourque does not provide motivation to modify the container of Leigner to have two different curvatures for opposing panels and does not cure the defects of Leigner, Wada, and Krishnakumar. Withdrawal of the rejection of claims 3, 14, and 16-17 is respectfully requested.

Claims 5 and 15 were rejected under 35 U.S.C. §103(a) as being unpatentable over the references as applied to claims 1 and 11 and further in view of EP Published Patent Application No. EP 1 386 844 to Saito et al. (hereinafter referred to as “Saito‘844”) as explained in paragraph 8 of the Action. This rejection is respectfully traversed.

Claims 5 and 15 depend from claims 1 and 11, respectively and add the feature of the vertical post being recessed between adjacent vertical sides. Contrary to the claimed

invention, Saito'844 teaches four planar sides with corners 11 and 18. The corners 11 and 18 have recesses 14 and 20 (see figures 2 and 3). This is not the claimed invention. The vertical post of the claimed invention is recessed between two adjacent vertical sides that have differing radius of curvature. As the Action notes, Saito'844 discloses and teaches a narrow bottom 15, 21 and not a vertical post that is recessed between two adjacent vertical sides as claimed by Applicant. Accordingly, Saito '844 fails to provide any motivation to modify Leigner, Wado and Krishnakumar to achieve the claimed invention. Thus, claims 5 and 15 are patentable at least for the reasons set forth above with respect to claims 1 and 11 and because of the feature therein. Withdrawal of this rejection to claims 5 and 15 is respectfully requested.

Claim 4 and claims 6-7 and 12 were rejected under 35 U.S.C. §103(a) as being unpatentable over the references applied to claims 1 and 11 and further in view of U.S. Patent No. 5,499,730 to Harbour and U.S. Publication No. 2002/0092821 to Saito et al. (hereinafter referred to as "Saito '821"), respectively as set forth in paragraphs 7 and 9 of the Action. This rejection is respectfully traversed.

Claims 4 and 6-7 and 12 are dependant upon claims 1 and 11, respectively. Thus, these dependent claims require all of the features of their respective independent claim 1 or 11. Neither Harbour or Saito '821 discloses a container with two different radius of curvature. Harbour discloses and teaches a four-sided planer container. Saito '821 discloses two radii, but Saito '821 teaches the opposing vertical sides having different radii. This is in contrast to the claimed invention where opposing vertical sides have the same radius of curvature and adjacent vertical sides have differing radius of curvature. Accordingly, neither Harbour or Saito '821 provide the necessary motivation to modify

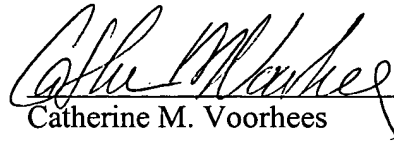
the smooth convex front and rear walls of Leigner's container with a smaller radius of curvature and the planar side walls of a Leigner's container with a radius of curvature so that side walls are curved with a larger radius of curvature than that of the smooth convex walls. Consequently, claims 4 and 6-7 and 12 are patentable over any combination of the cited references. Withdrawal of the rejection of claims 4 and 6-7 and 12 is respectfully requested.

In view of the above, it is submitted that one of ordinary skill in the art would not have been motivated to combine the cited prior art to achieve Applicant's invention as none of the prior art references teaches the use of vacuum panels on curved panels. It is only Applicant's own disclosure that recognizes that the combination of a small radius of curvature for the smooth vertical panels, which is difficult to move under vacuum conditions, and the large radius of curvature for the panels having the vacuum panels, which enables the panels very easy to move under vacuum conditions, creates a sufficiently rigid container on which labels can be placed and can still stack a number of filled containers one above the other. See paragraph [0005] of the Brief Summary of the Invention of the present application. Thus, it is respectfully submitted that the Action relies on impermissible hindsight to modify the base reference as the cited references teach away from the claimed invention. Reconsideration and allowance of claims 1 and 3-20 of the present application are respectfully requested.

If the Examiner believes that a conference would help to advance the prosecution of the present application, she is requested to telephone the undersigned at the number below.

Respectfully submitted,

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